

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

IN RE:

DAVID G. WALLACE, JR.,

DEBTOR

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CASE NO. 15-31594-H4-7

**NOTEHOLDERS/INVESTORS' EMERGENCY UNOPPOSED MOTION TO EXTEND
DEADLINE TO FILE COMPLAINT EXCEPTING DEBTS FROM DISCHARGE
UNDER FED. R. BANKR. PROC. 4007(b) AND OBJECTING TO DISCHARGE UNDER
FED R. BANKR. 4004(c)**

TO THE HONORABLE JEFF BOHM
UNITED STATES BANKRUPTCY JUDGE:

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE MOTION MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, THEN YOU SHOULD FILE AN IMMEDIATE RESPONSE.

The NoteHolders/Investors set forth in Exhibit A attached hereto ("Movants") file this Emergency Unopposed Motion to Extend Deadline to File Complaints Excepting Debts from Discharge under 11 USC section 523 and Fed. R. Bankr. P. 4007(c) and Objection to Discharge under 11 USC section 727 and Fed. R. Bankr. P. 4004(b) would respectfully show unto the Court as

follows:

I. Jurisdiction

1. This Court has jurisdiction over this Motion under 28 USC section 1334 and 157(b)(2)(I) and (J) and Fed. Rule Bankr. Proc. 4004(b) and 4007(c). This matter is a core proceeding.

II. Factual Background

2. On March 24, 2015, David G. Wallace, Jr. filed for protection under chapter 7 of title 11 United States Code. Rodney Tow has been appointed Chapter 7 Trustee.

3. The BusinessRadio Note Holders were enticed by the Debtor to make loans to one of the companies he controlled, Wallace Bajjali Development Partners, LLC (“WBDP”), which in turn made loans, as agent for the Business Radio Note Holders, to one or more Business Radio entities. The Debtor undertook responsibility to handle the loans and to obtain security agreements and perfect security interests on the BusinessRadio Note Holders’ behalves. The Debtor and WBDP failed to document the loans properly and failed to perfect the security interests. As a result, the BusinessRadio Note Holders were unable to obtain the assets of BizRadio or otherwise maintain their position as secured creditor. Additionally, the Debtor and WBDP made material misrepresentations of fact and failed to disclose material facts in order to induce the BusinessRadio Note Holders to make the loans at issue. The BusinessRadio Note Holders therefore have fraud claims against the Debtor relating to the transactions.

4. Due to the fact that Judge Atlas entered a bar order barring the BusinessRadio Note Holders from asserting claims against, *inter alia*, Wallace, certain of the BusinessRadio Note Holders filed an emergency motion to lift stay to allow them to seek clarification from Judge Atlas of the bar order. On June 9, 2015, this Court entered an agreed order which allowed the

BusinessRadio Note Holders to seek clarification from Judge Atlas of the bar order. To date, no hearing has been set on this matter.

5. Additionally, the Investor Group asserts fraud, breach of fiduciary duty, and conspiracy claims against the Debtor for his role(s) in the operation of BizRadio, Kaleta Capital Management, and the Wallace-Bajjali entities. The Debtor misrepresented the financial condition and business status of the entities involved in order to induce the Investor Group to make loans and equity investments. After they made investments, the Debtor entered into financial transactions with and/or on behalf of BizRadio, Kaleta Capital Management, and the Wallace-Bajjali entities which constituted fraud and/or breaches of fiduciary duty. These include, but are not limited to, transfers of money between the entities without disclosure to the investors, payments of expenses not for the benefit of the companies and/or their investors, failing to disclose that numerous businesses were insolvent as the result of self-dealing and insider transactions, using profits from one entity to shore up another entity to the detriment of certain investors, abandoning or neglecting the Wallace-Bajjali entities for which he was an officer or general partner in favor of his public-private partnership business, knowingly participating in a Ponzi scheme, failing to disclose that he was knowingly participating in a Ponzi scheme, and making misrepresentations of material fact about the operation and success of the various businesses involved.

III. Relief Requested

6. The Noteholders/Investors set forth on Exhibit A seek an order from this Court which extends the deadline specifically as to them, for filing complaints excepting their debts from discharge under section 523 and objections to discharge under section 727 until August 21, 2015. The Debtor has indicated, by email, through his counsel, that he does not oppose the extension relief requested herein.

7. Movants seek the relief in this motion out of an abundance of caution insofar as the Court entered an Order Extending Trustee's Time to Object to Dischargeability and Discharge Pursuant to 11 U.S.C. §§ 523 and 727 (Docket No. 45) (the "Extension Order"). The Extension Order provides the Chapter 7 Trustee, the United States Trustee and "any creditor" an extension from June 22, 2015 to August 21, 2015, or as may be further extended, to commence challenges under 11 U.S.C. §§ 523 and 727. Other creditors that have filed motions to extend have cited authorities that suggest the current Extension Order may be ineffective to extend the deadline for any challenges that the Movants may wish to lodge against the Debtor. *See In re Floyd*, 37 B.R. 890 (Bankr. N.D. Tex. 1984); *In re Tatum*, 60 B.R. 335 (Bankr. D. Colo. 1986); *In re Ortman*, 51 B.R. 7 (Bankr. S.D. Ind. 1984); *In re Butler*, 94 B.R. 433 (Bank. N.D. Tex. 1989). While there are distinguishing factors in these cases as compared to the Extension Order, for the avoidance of any doubt and to preserve rights, Movants requests a specific order extending the deadlines for the Movants to commence any challenges under 11 U.S.C. §§ 523 and 727.

8. Cause exists to grant the extension because the Movants' claims against the Debtor are intricate and complex and require additional time to analyze and properly assert. Further, as to the BusinessRadio Noteholders, they must obtain permission from Judge Atlas to pursue their claims, which requires additional time.

9. For these reasons, cause exists to extend the 523 and 727 deadlines until August 21, 2015.

10. Emergency consideration of this Motion is requested because the discharge deadline was originally set for June 22, 2015 and Movants seek an extension as to them, if not covered by the general extension order, before this date.

WHEREFORE, PREMISES CONSIDERED, the Note Holders/Investors set forth in

Exhibit A attached hereto respectfully request that the Court enter an order which extends the 523 and 727 deadlines to file a complaints excepting debt from discharge or objecting to discharge until August 21, 2015 for the reasons set forth herein and grant such other and further relief, at law and in equity, as is just.

Respectfully submitted,

/s/ C. Thomas Schmidt
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CERTIFICATE OF CONFERENCE

The undersigned certifies that he contacted Debtor's counsel, Janet Casciato Northrup, by email dated June 15, 2015, Ms. Casciato responded by email at 4:22 pm on June 15, 2015 that she does not oppose the extension request.

/s/ Preston T. Towber

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Emergency Unopposed Motion to Extend Deadline to File Complaints Excepting Debts from Discharge under 11 USC section 523 and Fed. R. Bankr. P. 4007(c) and Objection to Discharge under 11 USC section 727 and Fed. R. Bankr. P. 4004(b) has been served upon all parties listed on the attached Master Service List either by postage paid United States mail or electronically by the Court on this 17th day of June, 2015.

/s/ Preston T. Towber
Preston T. Towber

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